IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1222 OF 2007.

Suresh Bajirao Savant. ... Petitioner.

Versus.

The State Bank of India & others. ... Respondents.

Shri U.P.Warunjikar for the Petitioner.

Shri A.G.Damle for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 6th June, 2007.

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the Petitioner/original Plaintiff has taken an exception to the order dated 2nd December 2006 passed by the learned District Judge at Satara by which an application or stay of execution of the decree made by the 1st Respondent in a substantive appeal has been allowed.

2. In a suit filed by the Petitioner, there is a money decree passed against the 1st Respondent-State Bank of India. By the impugned order, the learned District Judge has stayed the execution of the decree. The 1st Respondent has been directed to give an undertaking that if the 1st Respondent fails in the Appeal, he will deposit the decretal amount in the Court under protest within a period of one month from the date of judgment of the Appellate Court. The contention of the Petitioner is that the money decree passed against

the first Respondent could not have been stayed by the Appellate Court without passing order of deposit.

3. It is not in dispute that an undertaking in terms of the said order has been already filed by the 1st Respondent and the said undertaking has been accepted by the District Court. Thus in case of failure in Appeal, the first Respondetn will have to deposit the decretal amount. In this case, the first Respondent is the State Bank of India.

4. The undertaking filed by the 1st Respondent-State Bank of India sufficiently protects the Petitioner. Considering the peculiar facts of this case, no case is made out for interference with the discretionary order passed by the District Court. Hence the petition is rejected. All contentions of the parties in the pending Appeal are expressly kept open.

Judge.